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Before The

FEDERAL COMMUNICATIONS COMMISSION

Washington, DC 20554

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Application of Verizon New England Inc., Bell)

Atlantic Communications, Inc. (d/b/a Verizon)

Long Distance), NYNEX Long Distance)

Company (d/b/a Verizon Enterprise Solutions),) CC Docket No. 01-9

and Verizon Global Networks Inc., for)

Authorization To Provide In-Region, InterLATA)

Services in Massachusetts)

)

COMMENTS OF CONVERSENT COMMUNICATIONS OF MASSACHUSETTS, LLC

Conversent Communications of Massachusetts, LLC ("Conversent" or the "Company") through its attorney, files these Comments in response to Verizon-Massachusetts' ("VZ-MA's") application under 47 USC § 271 for authorization to provide in region interLATA services. Conversent is a recent market entrant in Massachusetts. The Company provides a full array of voice, data and internet services to small and medium sized businesses by relying on its own switch, collocated transmission equipment, unbundled local loops and dark fiber interoffice transport. Although Conversent has only been in business since the fall of 1999, it has already accumulated over 27,000 local business lines in Massachusetts. Although it is certainly not its primary focus, the Company also terminates some ISP traffic in Massachusetts.

Conversent opposes VZ-MA's application on the grounds that it has failed to comply with the terms of 47 USC § 271 (c)(2)(B), has failed to comply with the terms of its Interconnection Agreement with Conversent, and has failed to comply with the Order of the Massachusetts Department of Telecommunications and Energy ("DTE" or the "Department") to pay reciprocal compensation based upon a 2:1 ratio of terminating to originating traffic. For this reason, the FCC should deny VZ-MA's application.

I. VZ-MA has Failed to Comply with the Checklist Due to its Failure to Pay Reciprocal Compensation in Accordance with Conversent's Interconnection Agreement and the DTE's Order.

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On October 21, 1998, Conversent and VZ-MA executed a standard Verizon interconnection template reflecting Conversent's adoption of the interconnection agreement between VZ-MA and Brooks Fiber of Massachusetts (the "Brooks Agreement"). Conversent opted into the Brooks Agreement because it permits a single point of interconnection for both parties; it does not contain Verizon's standard Geographically Relevant Interconnection Points ("GRIPs") language; it contains the best rates for unbundled network elements, especially unbundled loops; and because Conversent knew that VZ-MA had been paying reciprocal compensation to Brooks Fiber for calls to ISPs served by Brooks Fiber under the terms of such Agreement.

On the very same day that Conversent opted into the Brooks Agreement, the Department determined that calls from end users to ISPs were subject to reciprocal compensation and issued an Order that required VZ-MA to pay reciprocal compensation for calls to ISPs(1). In February 1999, the FCC issued a ruling holding that, while ISP-bound calls are jurisdictionally interstate, parties may have agreed to treat such calls as local for purposes of compensation(2). In May 1999, the Department ruled that the FCC's Declaratory Ruling invalidated the reasoning upon which the October 1998 Order was based. The Department's May 1999 Order vacated its October 1998 Order and accepted VZ-MA's proposal of making payments under its interconnection agreements at a ratio not in excess of 2:1. *Id.* at 32, 33. Conversent does not agree with the DTE's Order, but it is a valid final Order and in effect.

Conversent began billing VZ-MA for the termination of local traffic, including internet traffic, in April, 2000. Since that time, Conversent has billed VZ-MA approximately One Million Dollars (\$1,000,000.00) for the termination of local traffic, but it has only been paid approximately Two Hundred Thousand Dollars (\$200,000.00). True and accurate copies of Conversent's bills to VZ-MA for reciprocal compensation are attached to the accompanying Affidavit of Thomas Palie on Behalf of Conversent Communications of Massachusetts, LLC (the "Palie Affidavit").

Although Conversent has been billing Verizon the full amount of traffic that it terminates, Conversent understands, as referenced above, that VZ-MA is currently obligated only to make payments according to the 2:1 ratio of terminating to originating traffic. This ratio should not substantially affect Conversent because its traffic with VZ-MA is roughly within such a ratio. Unfortunately, as can be seen from the Palie Affidavit, VZ-MA has not paid Conversent for reciprocal compensation in accordance with the 2:1 ratio and insists on understating Conversent's originating traffic. As with other disputes, Conversent has tried to escalate this matter with VZ-MA so that regulatory action would not be required, but at each turn, VZ-MA creates yet another excuse for delay and, ultimately, nonpayment.

Conversent's Credit and Collections Manager, Thomas Palie, first began contacting VZ-MA about its outstanding bill for reciprocal compensation in July. Palie Affidavit at Paragraph 9. Marianne Antinarella, of Verizon, indicated she would investigate the matter. On or about August 15th, Conversent received its first payment from VZ-MA for reciprocal compensation. At the time, Conversent had billed VZ-MA for over \$600,000. Unfortunately, VZ-MA only paid \$21,347.79 of the total amount due. Palie Affidavit at Paragraph 9. When Conversent asked for an explanation for why it had not paid in full, Ms. Antinarella stated that Conversent's bill had exceeded the 2:1 ratio because the traffic that was originating from Conversent and terminating to VZ-MA was minimal in comparison to the traffic that VZ-MA was sending to Conversent. In short, VZ's position was that there was no outstanding amount due.

After Conversent protested that VZ-MA was understating the amount of Conversent's originating traffic, VZ-MA agreed to conduct a traffic study for the month of September 2000 that would show all of the originating and terminating traffic between Conversent and VZ-MA. If the traffic study showed that the traffic between

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Conversent and VZ-MA was in a 2:1 ratio (originating and terminating), then VZ-MA would pay Conversent the amount owed. Palie Affidavit at Paragraph 10 .

In early October, Ms. Antinarella confirmed that VZ-MA had completed the traffic study and that it was under review. After repeated requests for the results of the traffic study, Ms. Antinarella conceded that it showed enough originating traffic from Conversent for VZ-MA to pay Conversent in full for the month of September. Palie Affidavit at Paragraph 11. Mr. Palie asked if VZ-MA would also agree to pay all prior bills in full. Ms. Antinarella responded that VZ-MA would probably want to initiate another traffic study for October and if that study also showed that traffic was in a 2:1 balance that VZ-MA would pay all of our bills in full. Palie Affidavit at Paragraph 11.

On October 27th, Conversent received an email from VZ-MA that contained the actual results of the September traffic study. A true and accurate paper copy of this email is attached to Mr. Palie's Affidavit. The October 27th email also states that the traffic study for October was underway and that VZ-MA would share those results with Conversent when it was completed. Ms. Antinarella suggested that Mr. Palie follow-up with her during the third week of November.

Beginning the third week of November, Mr. Palie dutifully attempted to request the results of the October traffic study and to request full payment by year-end. Ms. Antinarella never returned Conversent's calls and VZ-MA has refused to provide the results of the October traffic study. Palie Affidavit at Paragraph 13.

Mr. Palie continued to escalate this matter with her supervisor at VZ-MA, Lori Carbone, who stated in mid December that the October traffic study had been completed and that VZ-MA had concluded that 42% of the traffic that Conversent was terminating was ISP traffic. She conveyed that VZ-MA's position was that it would pay 58% of Conversent's invoice because it pertained to regular voice traffic. She stated, however, that she wanted to run this by VZ-MA's attorneys and would call Mr. Palie on Monday, December 18th. Palie Affidavit at 14.

On December 18th, Ms. Carbone called Mr. Palie and told him that VZ-MA would not pay Conversent's bills until Conversent broke down the traffic it was sending VZ-MA into the percent that was local, the percent that was intrastate toll and the percent that was tandem transit traffic. Palie Affidavit at 15.

Subsequently, Conversent pointed out that the breakdown of traffic that VZ-MA was requesting is data that VZ-MA has within its control and that VZ-MA must have this data in order to properly bill Conversent for reciprocal compensation, access charges, and tandem transit service. VZ-MA asserted that Conversent is not entitled to the full payment for reciprocal compensation because VZ-MA must back out that portion of Conversent's originating traffic that constitutes toll service. This also makes no sense. To the extent a portion of the traffic that Conversent has sent to VZ-MA is toll, Conversent is entitled to compensation from VZ-MA at originating access rates. This rate is higher than the rate for reciprocal compensation. Still, VZ-MA is not offering to pay Conversent for originating intrastate switched access.

Finally, the very day before the filing of this pleading, VZ-MA's attorneys contacted Conversent and, for the first time, told the Company that it could not rely on VZ-MA's traffic study because such system "is not intended to be a billing system but a tool to help monitor and analyze traffic patterns and characteristics...the express report is intended to provide maximum figures on traffic passed between VZ-MA and the CLECs and is often used to verify the highest possible total that VZ-MA may be billed by the CLECs for traffic terminating on their networks." The latest stated position by VZ-MA is yet another example of how VZ-MA has continued to change its story about why it is permitted to continue to curtail Conversent's revenue in Massachusetts. It should not be tolerated.

II. Conclusion

VZ-MA has failed to comply with the §271 checklist by violating and continue to

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violate the terms of its Interconnection Agreement with Conversent and the DTE's Order concerning reciprocal compensation for internet traffic. Rather than pay Conversent the amounts owed for reciprocal compensation, VZ-MA has required Conversent to expend resources to escalate and, ultimately, litigate over revenues it needs in order to continue to expand and compete. The Commission should issue a ruling in this proceeding denying VZ-MA's 271 Petition.

Respectfully submitted,

/s/

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cc: Chairman James Connelly, Massachusetts DTE

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Commissioner Eugene J. Sullivan, Jr., Massachusetts DTE

Commissioner Paul B. Vasington, Massachusetts DTE

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1 Complaint of WorldCom Technologies, Inc. (successor-in-interest to MFS Intelnet Service of Massachusetts, Inc.) against New England Telephone and Telegraph Company d/b/a Bell-Atlantic-Massachusetts for alleged breach of interconnection terms entered into under Sections 251 and 252 of the Telecommunications Act of 1996 (October 21, 1998) ("October 1998 Order").

2.

2 See In the Matter of Implementation of Local Competition Provisions of the Telecommunications Act of 1996, Inter-Carrier Compensation for ISP-Bound Traffic, Declaratory Ruling in CC Docket 96-98 and Notice of Proposed Rulemaking in Docket 99-68, CC Docket Nos. 98-98 and 99-68 (released February 26, 1999) ("Declaratory Ruling").